

G. R. S. 58]

Previous references.

Legi 7 of 04-05 (2-7) A.

1906.07

(Legi)

File No. 46-06

Serial Nos. 1-6

Later references.

Legi 90-10

Ms. 205-14

GENERAL AND REVENUE SECRETARIAT

Serial Nos.

1-4

Part B for

Dec 07

SUBJECT.

Amendment of the Civil
Procedure Code.

of the Compiler Mysore Gazette

No. of 2754 of 8/3/05

Direct the publication of the
draft Regulation in 3 successive issues
of the Gazette & state that it will be
taken up for consideration at the end of
3 months from the date of its publication

M. S. Chowdhury

27.3.15

GPB-3,500-21-728

P. T. O

2) To the Reg^r, Chief ~~CT~~

N^o 2755 of 8/10/07

For a copy of the ~~Draft Reg^r~~
& request him to furnish Gov^t with
the opinion thereon of the Judges of
the Chief CT & of other Justices
& leading members of the bar whom
the Chief CT may wish to consult
3) From the same Office

N^o 5755 of 1.4.07

²⁵⁹
For the opinion of the Judges
of the Chief CT & state that further
opinions called for will be forwarded
as soon as received

4) From M^r B. Vullatsam, Adv

Chillaldrug of 3/7/07

For copy of the Proceedings
of a meeting of the Law Anⁿ held
at Chillaldrug protesting against
the amendment of sections 584 (d)
& 586 & supporting that the Chief
CT may be relieved of its original
jurisdiction by the Establishment
of a Dist & Sessions CT at Bapatla

5) From the Reg^r, Chief CT

N^o 426 of 15/7/07

For the opinion of the Dist
Judges of Bq. Mysore & Shimoga with
those of the Gov^t Adv & N. C.
Kishore... murthi Adv

2145
22/12/08

G. R. S. 11]

190-07

GENERAL AND REVENUE SECRETARIAT.

(Legislation)

NOTES.

File No. 44

FILE HEADING.

Amendment of the Civil Procedure Code

From

No.		Dated		Received	
Diary No.	}	Enclos.		Spare Copies.	{ Serial No.

BRIEF ABSTRACT OF LETTER.

NOTES AND ORDERS.

Serial No.

Submitted to the Secretary.

I am directed by the Rehearsment-Committee to forward an extract from the minutes of the late Chief Justice Mr. Staley containing certain suggestions for the expedient disposal of judicial work in this case.

Since it is under contemplation to abolish certain courts in the interest of sound economy without material hardship to the litigant public, the necessity for effecting suitable changes to relieve congestion of work that would otherwise be caused, is at the same time urged.

The Committee will be glad if the judicial and legislative department will kindly favour them with a note on the several points raised in the accompanying memo at an early date -

15.8.06.

W. Freeman Jones

Just

Please send a note showing how the matter is dealt with -

W. Jones

15/8/06

4. Encl. with a note

SP
12/9/06

Serial
No.

I. i. Repeal of
Sec: 584 (d) of the
Civil Procedure Code

There are no references
on this subject. A copy
of the British Code of Civil
Procedure + that of the
Mysore Code are put up.

Please put
up here whoo"
Ref II of 1884.
Subd
File put up
SR
19/10/06.

I. ii. v - Small Cause
Court jurisdiction

Act XI of 1865 is not in
force in Mysore as stated
in the Memo. (Vide footnote (b)
page (v) of the Mysore Code,
Vol: I. The investiture of small
Cause powers ~~are~~ is now made
under the authority of Section
16 of the Civil Courts Regulation
I of 1883. The Chief Court +
the St. Courts have no original
Small Cause jurisdiction. The
Small Cause jurisdiction of Mā
Courts are noted below: —

Sub Judge, Bangalore. Suits exceeding Rs 50, but not exceeding
Rs 300.

" Mysore - do " " 100

" Hassan - do " " 300

" Chikmagalur - do " " 100

" Shimoga - do " " 100

GPB-50,000-25 10-05

Suits not exceeding Rs 50

Note: Contn. sheet
This small cause
suits up to Rs 50
in Shimoga.
Shimoga

Serial
No.

2. Small Cause Court } 7 A draft Regulation
Regulation

On the basis of Act X
of 1887 was published in
the Mysore Gazette in 1902
and has been pending considera-
tion since then. The file
on the subject is reported to
have been recirculated and
is now pending with the L.
Council.

obtain information
about small cause
powers of Presidency
Court, Sub. Judges, Municipal
in District Court
etc.

Small Cause powers.

Madras Magistrate - Rs 2000 (Sec. 18 of P.S.C. Act XV of 1882)
Sub judges (Madras) - 500 (Sec. 28 of Madras Civil Act III of 1873)
M. Municipal (do) - 200 ()

3. Inspection of } 8 Notice is being taken of
Subordinate Courts. } the inadequacy of in-
spection of subordinate
Courts in receiving the
Reports on the working of
Civil & Criminal Justice.
Recently the Govt. in their
order No. J 101/05 118-05-6 dated
the 16th July 1906 observed
that they attach special im-
portance to a speedy disposal
of appeals in criminal cases
and to a regular
periodical inspection of all

Collectors
to be seen. maybe reviewed
from file etc

Serial
No.

Subordinate Courts.

4. Calendars. 9 There are no references here on this subject.

5. Proportional Share of Land Rev. charges debit-able to Police Budget. } 10 The practice now is to debit $\frac{3}{8}$ lbs of the Salaries of Dy Courts + their travelling allowances + $\frac{1}{2}$ of the Salaries of Sub-Dy officers, Asst Courts & Amildars + their travelling allowances + $\frac{1}{2}$ of their establishment to the Courts budget.

6. Appnts of Village Munsiffs + panchayats } The Chiefclerk in their letter No. 5462/211 dated the 6th Febua 1906, recommend that where at least $\frac{2}{3}$ of persons in a village paying a

Get Rules Practice
re-calendars.

Subd
Rules of Practice No: 58 + 67
d: 1st Sept 1892 + 12th June 1899 are
put up.

SW
13/1/06

File submitted
by

Serial
No.

Kandayam of Rs 10 + upwards
applies for the appointment
of a Village Munsiff and
agree for nominating one,
such man may be appointed
as a Village Munsiff with
powers as under Act I of
1899 (Madras). This file
was subd. to the late secretary
on 26.3.1906 who has called
for certain references. The file
has since then been pending
in the Branch & is now put
up.

- 12 There is also another proposal of the
Chief Court which has been pending
before Govt., which is to make all
the appeals (Civil) of the value of
Rs 200 + upwards and all criminal
appeals against sentences of imprison-
ment of one year and upwards
and of fine Rs 500 + upwards or both
to lie direct to the Chief Court. The
file was subd. to the late Secretary who
has ordered that the matter be allowed
to lie over for the present & brought
up.

Serial
No.

up for discussion at the next ~~Duesera~~
meeting. The file is put up for inspection

CN

12/9/06

Miss J 102

- 13 1. See 584 (d) of Civil Procedure Code. This provision is not found in the British Indian ~~Law~~ Code. It was added by Sec 45 of Reg. II of 1884. The repeal of this provision would undoubtedly reduce the work of the Chief Court very considerably.

2.

- 14 ~~As per~~ As the work in connection with the administration ^{report} is very heavy, I find I have no time to deal with this file. As permitted by the Secy. it is submitted to them

31.10.06

- 15 The office will submit separately for orders the files relating to the Small Cause Courts draft S.B. 7 & Village Munsiffs and Santhazats. Points 3, 4 & 5 are minor ones on which no particular action is necessary at present ~~other~~ ^{referred to the principal} The other ~~of them~~ relating to the ~~Augment~~

(8)

Serial
No.

of the Civil Procedure Code, will be dealt with here.

16 Clause (d) of Section 504, was inserted by Regl. II of 1884, which also lowered from Rs 500 to Rs 50 the limit up to which second appeals were barred in suits of the nature of small causes. The object of these alterations was explained to be "1^{stly}, to allow a second appeal on questions of fact when the two lower courts have differed in opinion on such questions, and 2^{dly} to allow second appeals in all suits of a small cause nature of the value of above Rs 50." And it was added: "These alterations are considered advisable, because the decision of the Chief Court will be final in Mysore, no provision being made for a further appeal to the Sovereign as is the case in British India and in other Native States. The chief Court of three Judges shortly to be formed will be able easily to dispose of the larger number of second appeals which will be preferred under the ^{altered} law." ~~the~~

17 The main consideration on which the ^{first of the above} alterations of law ~~in Mysore~~ ^{was} based remains unchanged, as there

Which is not to be found in the Code as in force in British India

Letter to Secy 27/4-4-84

Serial
No.

still no promise for a further appeal to the Sovereign from the Chief Court. The entire abolition of the right of second appeal on questions of fact is likely to be unfavourably received by public opinion; and hence the provision in question may (according to the alternative accepted by Mr. Staley) be limited to appeals of the value of Rs 500 and over. The limit in regard to suits of the nature of small causes may also be raised to Rs 500.

18 The accompanying Draft No. 18 embodies the necessary changes in sections 504 & 506. The opportunity has also been taken to set right certain formal defects in the Code as amended by Act III of 1906. The Statement of Objects & Reasons fully explains the reasons for the changes proposed.

If approved, the Chief Court will be consulted unofficially on the Draft No. 18.

(18-11)

27/11

27.11

19 The Drafts may be published in the Gazette in the usual way, and the opinions of the Chief Court & select members of the

Serial
No.

Members of the Bar & of the Judicial
branch of the Dewans specially invited
18 Dec 06

- 1) Publish in Gazette in usual form,
fixing 2 months' time.
- 2) Write separately to Chief Just, inviting
their own opinion & that of the others
mentioned by the Council -

28/12/06

19 Dec
12/1/07

20 Submitted with 2 drafts
26/12/06. SN

21 The Dewan is not at liberty to
publish draft measures legislation
before consulting the Board. The decision
~~The accompanying~~ ~~the present draft~~ ~~is to be made~~
Ahd also annex
Dec 06

3383
31/07

20/12/06
12/1/07

22 The draft D.O. was approved by the Dewan
and issued from the Dewan's Office on 26 Jan 07

28/1/07

CSB
28/1/07

Serial
No.

22

Wait for a fortnight (in case the Resident may be disposed to address us personally on the subject) & then dealing with a ~~draft~~ draft to Comptroller, & Chief Secy.

15/2/07

W.
20/1/0

24

Subd

A fortnight has elapsed and no reply has been received from the Resident. The drafts which had been once put up are resubmitted for approval.

15/2/07 15/2/07

Subd to Secy

W.

25

(The matter should be carefully corrected by the Secy in proof)

15/2/07

Subd to Secy for a 15/2/07

26

I have no objection - But take the Dewan's approval also please

15/2/07

W.
18/2/07

Dewan 15/2/07

3899

27.2.07

27

The Dewan approves of the draft being published

W. 15/2/07

28

D.D. 15/2/07

11/5/07

15/2

Serial
No.

1 Do the compiler, Mysore Gazette No 92754 of 8/8/07.

Directs the publication of the Draft Regulation in 3 successive issues of the Gazette, and states that it will be taken up for consideration at the end of 3 months from the date of its publication.

2 Do the Registrar of the Chief Court of Mysore No 92755 of 8/8/07.

Forwards a copy of the Draft Regulation and requests him to furnish info. with the opinions ^{thereon} of the Judges of the Chief Court and of other judicial officers and leading members of the bar whom the Chief Court may wish to consult.

3 Do the same order No 5755 of 28/9/07.

Forwards the opinions of the Judges of the Chief Court & states that further opinions called for will be forwarded as soon as received.

29 The Chief Judge while agreeing to the insertion of a clause to Sec 36A as proposed and to the amendment of Sec 586, states that he would cancel clause (d) of Sec 584 altogether and go back

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No.

to the law as in force is so said &
that the addition to section 588 is
of doubtful utility.

30 Mr Justice A. V. Nageswariah agrees
with the views of the Chief Judge except
as regards the cancellation of clause
(d) of Sec 588.

31 Mr Justice P. S. Krishna Rao, approves
of the amendments proposed in the draft
and states that clause (b) of the
Sec 588 should be amended as follows

" for payment to the decree holder a sum
equal to the purchase money together with
the costs of the attachment and sale, provided
that in case in which such sum is less
than the amount specified in the proclama-
tion of sale as that for the recovery of
which the sale was ordered (less any
amount which may, since the date of
such proclamation of sale, have been
received by the decree holder), it shall
not be necessary for the judgment
debtor to pay more than this latter amount

32 Submitted for advs. May the further
opinions promised as well as the lapse
of 3 months provided for the receipt of
criticisms from non official bodies, be

Serial
No.

awaited. The draft was published for the
first time in English in the Gazette
of the 22nd March.

33

Await receipt of the further chairman
promised

See

4/4

4

From Mr. B. Venkatsamanna, Advocate,
Mitalong dated the 2nd July 1907

Favours copy of the proceedings
of a meeting of the Law Mts. held at
Mitalong protesting against the amend-
ment of sections 582 and 586 and
suggesting that the Chief Ct may be
relieved of its original jurisdiction
of a District
Bangalore

From the Registrar of the Chief
Ct No. 416/07 dated the 15th July 07.

Favours the opinion of the
District judges of Bangalore, Mysore &
Chinnai with those of the Jt. District
Advocate.

34

Mr. J. Paramanarayana states that
while it is advisable to limit the
number of appeals, the limit of
Rs 500 would be very hard in cases

Serial
No.

with the ownership of wet and dry lands where the value of the subject matter calculated under the rule of 5 times the Government assessment represents frequently less than 5% of the market value of the lands; and the many

^{See also} ~~the~~ ^{members of the} ~~the~~ S. Venkata Varadan Judge
the Dist Judge Mysore —

35 1. The word "application" should be inserted after the word "Report" in the subsection to be added to Sec 310 A, as without this word there will be room for contention that mere deposit of money is sufficient to have the sale set aside.

36 2. As the above addition will make it imperative on courts to set aside the sale on the deposit of the amount, addition ~~to Sec 586~~ ^{to Sec 584} requires reconsideration, so as to make appeals allowable only when the application to set aside the sale is refused.

37 3. The proposed addition ~~to Sec 584~~ ^{to Sec 586} is unnecessary, as the section provides that appeals lie unless otherwise provided & Sec 586 provides for cases

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in which no second appeal shall lie & that it is enough of sec 586 is properly worded.

38 a. As the small Cause jurisdiction ~~of the munsifs~~ has to be reduced to Rs 100, ~~the~~ but being of opinion that it was pitched too high, ~~the section~~ Sec 586 may be amended as follows:—

39 "In sec 586 for the words '50, the word Rs 500 shall be substituted when the ^{2nd} appeal is against the decision of the Dist judge. and Rs 100 when it is against that of the Subjudge.

40 Mr R B Phule. Amendments appear necessary

41 Mr S. Narayana Rao. If this bill were to become law, the number of second appeals will go down by half and that as the state of litigation in the State is very poor, the proposed alteration will affect the scope of rectifying errors of judgment in many cases affecting the poorer section of the population who form the majority of the litigants.

Mr C. Krishna Murthy. States that the word 'Advocate' word shall be substituted for the word attached in clause 4 of Sec 586.

Serial
No.

I that the money limit fixed in
Sec 584 (d), should be 100 Rs. and
Sec 586 also be ~~amended~~ amended accordingly

42 Oct 5 for order. The question of introducing
this before the Legislative Council, and the
member who should introduce it
may perhaps be now considered
the period of 3 months has expired

30/10/07
31/10/07

43 This is a very simple
measure for the amendment of
the Civil Procedure Code. It re-
lates to four sections therein and as
explained in the statement of objects
and reasons is intended to rectify certain
formal defects in the Code as amended
by Reg III of 1906 and to curtail the right
of second appeal to the Chief Court to
a certain extent.

44 Sec 310 A - The only amendment
proposed is the insertion of a clause
stating what the Court has to do where
the deposit is made. This is admitted
by all to be necessary.

45 Clause ii of this section runs
as follows "For payment to the decree-
holder, a sum equal to the purchase

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No.

* Should it not
be "more"?)

* Why not omit
the words "for
the judgment of the
court" section begins
with "Any person to"

and sale, provided that in cases in
which such sum is less ~~than~~^{*}
~~amount~~ than the amount specified
in the proclamation of sale as that for
the recovery of which the sale was ordered
(less any amount which may since
the date of such proclamation of sale
have been received by the decree holder)
it shall not be necessary for ^{*}the judg-
ment-debtor to pay more than this
latter amount.

67. In connection with this, we
may, I think, wait and see what de-
velopments take place in British
India -

48. Mr. C. Krishna Murthi suggests
that in clause (4), the word "Sold" be
substituted for "attached". The former
seems more appropriate than the latter.
In the case of mortgage decrees to which
also this section applies, no attach-
ment ~~is~~ is expected before ordering a
sale -

67. The amendments proposed in
respect of sections 584 and 586 ~~and C.P.C.~~
relate to appeals to the Chief Court

Serial
No.

Opinions are divided as to whether it is expedient to ~~decide~~ curtail the right of appeal to the Chief Court.

50

Sec 588. The addition of another clause 16 A to this section making orders passed under sec 310 A appealable is considered unnecessary by the late Chief Judge as well as the present officiating Chief Judge. ~~As they argue that an order under sec 310 A may be one coming under sec 244 of the Act and that in the former case, it is appealable and in the latter not - it does not necessarily follow that an order under sec 310 A should be made appealable merely because it is said in the last clause that of that section that the property shall not be liable to be sold attached unless the order is set aside on appeal or otherwise.~~

The Select Committee of the Imperial Legislative Council had however ~~proposed~~ approved of this addition to sec 588 proposed in the Bill itself.

51 The Bill was to go before the Legislative Council. Submitted for instructions as to who may be asked

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No.

to make the necessary motion and who to
introduce it.

(111)

9

Will?

52 Submtd to 18th. Perhaps Mr
Rangasami Iyengar or the Govt Advocate
maybe asked to introduce the bill

C883

53 Yes. Please obtain the
Dewan's permission

12/8 12-8

6015
27.8.07 Dewan
24/8 24-8

54 Dewan's note

The Govt Advocate maybe
asked to introduce the Bill

B.O. 29/8/07

Asst Secy Brn

30/8

U.O. J 14

55 Forwarded unspecially
to the Govt Advocate.

30.8.07

H. M. Narayan Rao

U.O. 13.

13/8/07

56

On going through the several
suggestions made, I think it

Serial
No.

advisable to include in the bill
the harmless addition to clause
310 A suggested by Mr. P. S. Krishnamoorthy

57

I enclose for approval a
draft of the remarks I mean
to read when moving for leave
to introduce the bill.

S. Narayana Rao
12.9.07. Govt. Advocate

Subd fm. aides

58

SR
13/9

The Govt Advocate suggests
the addition to ^{section} ~~clause~~ 310 A, of
the clause proposed by Mr. Justice
Krishna Rao - may this be done?

x If so, the Residency should be addressed
in the matter -

Secy) 14.9.07. SR

59 x not necessary to address the Res^y about this
small change. The bill will ~~go~~ go
to the Govt of India, I suppose, after it
~~has~~ before the final reading in the
Legislative Council. The draft speech of Mr. Narayan
may maybe submit to Mr. P. S. Krishnamoorthy
for perusal -

SR
16/9

14/07
16.9.1907

60 Submitted to Mr. 18 Cr.

Seen - I was not 16.9. SR

GPB-50,000-25-2-07 aware

Serial
No.

aware that addresses of this kind
should be previously approved -

61

This 19th Nov
Submitted to the Dewan as
per Secretary's note above.

6420

19.9.07

19.9.07

222

Seen by Down

10. H. 02

Lee

62

Please put up a typed copy, with the amendment proposed by Mr Justice Krishna Rao added.

12. 11. 07

June

Y
Legs
Gut
Gut

6

15-11-07
Draft of a bill with
the amendment suggested by Mr Justice
Kreskna Rao is put up - In the margin,
some observations are made. They may
be considered. The alterations, if any,
which the draft bill may require,
may be made and the file returned
for further action.

Govt. Advocate) 18.11.07. H. M. Farooq

one of opinion that the marginal observations are sound & may be carried out. I further suggest that the word 'Report' may be

Libertarian

Note—Contn. sheet

Serial
No.

for the word 'pay' in the last but one
line of the first page of the draft as
noted therein by me.

30. 11. 07. S. Narayana Rao
Govt Secy.

Subd for order.

65

~~The draft is to be sent to the Secy of
the Govt and Sanction has been
accorded to the moving of~~

After perusal and order if any,
the Mr. Advocate will be requested to
obtain the sanction of the Secy ^{as required by} under
Sec 12 of the Legislative Council Regulation
for introducing the bill and to send up the
final note to the Secy after the sanction
is obtained and the necessary forms will
be forwarded

66

Yes. Please put up
a draft covering letter
forwarding the form

6.12.07. MWD

67

A few typed copies of the
Bill as finally revised may be
got prepared

6.12.07 MWD

V. J. S.

Serial
No.

68

Draft of a bill to Mr. J. Nanayane class. i.
subd for approval. ^{6/12/07} The draft bill will be
set type with the amendments a directed.

MS
7/12/07 SN
7-12-07

69

Issue - For the present
we need ~~only~~ send only the form of
application to the Dewan for
sanction - The notice form may
be sent later on -

7-12-07

Willis

70

The bill was introduced as a new Bill on
the lines of Act V. of 1908 was placed before
the Legislative Council.

71

Please see proceedings of the Legislative
Council of 2nd Sep 1909 (Supplement to the
Mysore Gazette of 9 Sep 1909).

SUBJECT No. 18.

Munsiffs to be empowered
to appoint receivers.

Mr. H. Shama Rao, Sagar Taluk.

Summary of discussion.—The formalities observed in the attachment of the produce of trees or standing crops are the same as those observed in the attachment of immovable properties. According to the existing practice, the District Judge is the authority empowered to appoint receivers for the former. Much time is lost in obtaining orders in this behalf from the District Judge, and there is every probability of the property being, in the interval, disposed of by the parties concerned. It is therefore prayed that the power of appointing receivers may be vested in the Munsiffs.

Reply of Government.—This will be considered when the question of amending the Civil Procedure Code is taken up.

This may be noted in the
legislative section and then
deposited as no further action
is at present called for.

Submitted for orders.

HCS SF
28/12/07

Secy) 30.12.07

Br III will note
action in prep

— If there is any bill to
CPR now before Leg
provision may ^{perhaps} also be
in it

CHB
28/1/08
20/1/08

to Leg

8.1.08

LWS
It does not seem that
it will be possible to introduce

Routine Notes.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

placed before the Council
The Residency will not
have been consulted re-
garding this -

The question does
not seem to be one of an
emergent nature and we
perhaps wait till the C.P.
bill in British India is
passed

Secy) - 10.1.08.

HMW

This appears to be an
amendment as to which
there does not seem to be
any likelihood to be
any controversy - If
it might be put in
the present bill. Perhaps
the Res may be informed
put up draft amendment
& a draft of letter to

Res

CH

12/1/08

HMW

13.1.

N.B.—Should routine notes be written on small
slips, the notes must be copied, or slips
pasted on this form.

Routine Notes.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

A Draft of Do. to the
First-Resident with the
bill amended and
revised statement of
objects and reasons therefor
~~are~~ are subd
~~22~~ 22 ^{III} 12/1/08

Submitted to the
21.1.08. ^{III}

As directed by the Secy. in
room answers Draft
a D. is now subd for
approval

^{III} 21/1/08 Submitted
Secy) 21.1.08. ^{III}

The amendment may perhaps
be taken up in connection with
the bill now before the Leg. Cl.
A draft letter to Res. ^{III}
drawn through (1872)

^{III}
21/1/08

Write
note

43

^{III}
6.2.

5483
21.1.1908

^{III}
28/1/08

B. — Should routine notes be written on small
slips, the notes must be copied on slips
pasted on this form.

(1)

Suggestions of the Chief Judge,
Mr. Staley, for the speedier disposal
of business.

1. 1. Section 584 (d) Civil Procedure Code allowing a Second Appeal in any case where the finding of the original Court differs from that of a Court of first instance should be repealed. If the majority of the Judges disapprove this proposal, the provision may be limited to appeals of the value of Rs. 500 and over or such limit as the Judges think fit.

11. In the S.C.C. Suits Second Appeals the limit under section 586 Civil Procedure Code is in British India Rs. 500. In our Code it is Rs. 50. The limit should be raised to Rs. 500.

I have never been able to see any good reason for Second appeals being allowed in petty cases. They have greatly blocked the progress of litigation.

iii. A Judge of the Chief Court should himself have on the Original Side S.C.C. Jurisdiction up to Rs. 5,000. The draft Regulation for Mysore Small Cause Courts should be made law. We considered it fully and reported to Government but have heard no more of it for about two years. The S.C.C. procedure in force is Act XI of 1865 but section 6 of that Act only allows it in suits up

to

to the value of Rs.500. I believe though I have not got the reference that the jurisdiction of Presidency Small Cause Courts under Act XV of 1882 (Rs.2,000) has been raised to Rs.5,000 for Presidency towns for many years. Even a single Subordinate Judge in Bengal is sometimes now vested in the Mofussil with the Small Cause Court powers up to Rs.2,000; and I think the Chief Court of Mysore should have more extensive powers, being fully qualified.

iv. Each subordinate Judge should ordinarily have the Small Cause Court jurisdiction up to Rs.300.

v. Each Munsiff of five years' approved service should ordinarily have Small Cause Court powers up to Rs.100.

2. When the Small Cause Court Regulation came for our consideration, I recorded my opinion on the necessity for more extensive Small Cause Court powers being granted in order to facilitate more speedily the demands of traders and business people. It stands to reason that they will not litigate if it costs more (as it frequently does now) to litigate than to enforce a just debt. At present with limited Small Cause Court jurisdiction and the appalling delays in the original Court, first and second appellate Courts involved, it is surprising that there is so much litigation as there is. There will, since
nothing

nothing is perfect, no doubt be occasional miscarriages of justice. But they will not cause so much harm as justice so ruinous and dilatory that it is worth nothing at all but the name. I have no doubt that if justice were speedier the amount of litigation would greatly increase, when the new procedure should be understood, and that there would be a corresponding rise of income.

3. Next as to inspection by the Chief Court Judges, I think they should ordinarily be responsible for inspecting District Magistrates, Sub Judges and Munsiffs of the Bangalore Division, and the District and Sessions Judges' Courts of Shimoga and Mysore; that the District and Sessions Judges of Shimoga and Mysore should ordinarily be responsible for inspecting the Subordinate Civil Courts and District Magistrates' Courts of their Divisions, and the District Magistrates be ordinarily ~~be~~ responsible for inspecting the Courts of Magistrates subordinate to them. I see no ^{sense} ~~reason~~ in relieving District Judges and Magistrates of their inspection duties when Chief Court Judges have their own Court work to do. This will not prevent a Chief Court Judge if he has time and wants a change or there is any necessity for it, going anywhere in the State and making any inspection he thinks fit. There is an auditor continually engaged

in

(4)

in inspecting the accounts of subordinate Civil Courts, and of that very important technical work inspecting officers are to a considerable extent relieved

4. There is quite an unnecessary waste of time of the Courts in copying and sending for our perusal and in our reading them proceedings in petty cases - I refer to the Calendars. They should be limited to cases in which the accused has been sent up for trial or has been convicted of offences punishable with three years' imprisonment and upwards or in which death has resulted to any person in the course of the transaction with which the alleged offence is connected. Nothing more is necessary to enable us to be satisfied that the proceedings except in petty cases has been regular and the sentences proper.

5. If in future the cost of the Mysore Judicial establishment is to be estimated on the basis of the cost of the Madras establishment then in future only a fifth instead of a half of the pay of Revenue officers exercising powers of a Magistrate should be debited here to Law and Justice. And as in Madras village Munsiffs and punchayets should be appointed to settle petty cases. On the latter point the Government have already all necessary particulars after the fullest inquiry.

1-8-06

sd. A. E. Staley.
Chief Judge.

copy

copy.

N. Sreenivasulu Reddy
1-8-06sd. A. Rajanatha Mudaliar.
Magistrate.

5

Memorandum

by

Mr. C. Krishna Murti, Representative Member, Bangalore
Law Association.

1. Amendment of the Code of Civil Procedure

Regulation No. III of 1906.

The new section 310A introduced into the Code of Civil Procedure enacts that the "Person" defined therein may apply on certain terms to set aside the sale of any immoveable property. But it does not prescribe the mode of disposing of the application so made. A doubt is therefore entertained as to whether the Court, receiving the application, if it finds the terms therein mentioned are fully complied with, shall proceed to set aside the sale as in the British Code or refuse to set aside the sale in the exercise of its discretion. The last clause of this section suggests a right of appeal against an order passed under this section. If an appeal lies then the necessity of amending the section 588 clause 16 does not seem to have been considered, as by the nature of the definition of "person" and the terms imposed, and considering also that if the decree-holder himself is not the purchaser, the order under section 310A cannot be deemed to be proceedings between the decree-holder and the judgment-debtor and under -- section 244. Again does the "appeal" referred to in this clause include a "second appeal"? The last word "otherwise" in this clause is indefinite. Does it mean proceedings by way of revision under section 622 or also by a regular "suit"? Then again the expression "the property sold shall not be liable to be again attached in

" in execution of the same decree" seems to defeat the very object of section 310A. Does it mean the said property may be sold again in satisfaction of any sum that may be still due under the decree? Because the only order to be made under section 310A is to set aside the sale and not the attachment; and no reattachment is necessary under the Code to sell the property again. Probably it was meant to say that the said property shall not be "sold" again in execution of the same decree. These are a few practicable difficulties in the application of this section. It is therefore requested that the Government may be pleased to reconsider the section.

2. The Caste and Religious Disabilities Bill.

The necessity for this Legislation does not seem to be pressing. If the Bill is meant to remove certain disabilities from change of Religion I would say from a purely Christian Missionary standpoint though not -- without much diffidence the Bill might be passed into Law with necessary modifications. But the Bill provides to remove certain disabilities arising from deprivation of Caste. A man or woman may not change his or her religion. Yet he or she may be deprived of -- caste for violating certain rules of society. In the interest of the up-keep of the society to which he or she belongs the Bill if it were to remove the disabilities entailed by the deprivation of the caste it will certainly affect the very constitution of the society in India and its law and usage. This will not be good to the Hindu or the ~~Mahomedan~~ Mohamedan. " The public good ought to be the object of the Legislator; --- general feeling ought to be the foundation of his reasonings," says Bentham. Therefore the proposed Legislation will

will not serve the general good of the community of -- the Hindus or the Mohamedans or both who to a very large extent prevail in this Province. The measure may be for the present dropped.

3. Reduction in the pecuniary jurisdiction of
the Sub Judge &c

Past experience has shown in my opinion the present 300 rupees small cause jurisdiction is very high and it may be reduced to 100 rupees as was once before. I will be only repeating several reasons assigned for this -- change which have been more than once urged before the Government. The Munsiffs in Bangalore may be relieved of their small cause jurisdiction altogether. This will give and leave sufficient work for Sub Judge and Munsiffs respectively.

4. The Small Cause Court's Bill.

I need not repeat the necessity for this Legislation. We have been almost every day feeling the utter insufficiency of the Law (Act XI of 1865) we are now working with on the subject.

5 & 6. The Guardian and Wards Bill
&
The Lunacy Bill.

The rules on the subject (of 1872) are very unsatisfactory and quite insufficient. They deserve to be repealed without further suspense. These Bills now before the Government with a few modifications may be passed into Law.

7. The Hindue Wills Act and the
Probate and Administration Act.

The sudden change of time since the appearance of plague in Mysore has proved the necessity of making ~~some~~ one's

one's will for the disposition of his property to avoid the rigour of the Hindu Law on a deceased man's estate. I need not refer to several hard cases that have come up before Courts to the utter destitution of a deceased man's wife, children, and other dependants. There is therefore a necessity to make one's will in the interest of his wife and children. If a will is made, there is no law providing rules for the " execution," " attestation," " revocation," " revival," and "interpretation," and also for obtaining probate of wills and letters of administration. The introduction of a Regulation on the lines of the Hindu Wills Act and Probate and Letters of Administration Act from the British Code, will satisfy these wants and prevent people from having recourse to the provisions of the Succession Certificate Regulation by making false and imaginary debts as due and owing to a deceased man's estate to obtain a representative ~~sh~~ character to the same. If this legislation on the broad lines could not ^{be} undertaken to have force throughout the Territories of Mysore, at least the same may be made law within the limits of the city of Bangalore and of Mysore

8. The practical inutility of the three pie paper for Court purposes and their discontinuance.

The experience of past years proves the utter unsuitability of these papers for the purposes for which they were originally intended. The rule on this subject may be kindly withdrawn to the satisfaction of the public and to the credit of the Government.

9. The Amendment of the Land Revenue Code &c.

The request appears to be fair and reasonable. --
 Probably the matter would not have approached the -----
 Government had it not been for the decision of the ----
 Chief Court in Second Appeal No. 64 of 1905-06. a Full
 Bench

Bench of the Chief Court, one of the Judges, however, ⁹ dissenting, held that a kandyam due to a superior holder of an alienated village from an inferior holder of a land with a right of permanent occupancy was not a charge upon his holding. This seems to be rather hard and inequitable for more than one reason. If the land in the occupancy of the inferior holder was in an unalienated village and had to pay an assessment to Government, of course, there would be no question of the land being held primarily liable for its assessment (kandyam). The superior holder is only a middle man between Government and the actual occupier of the land. If the Government had a charge upon the land for its kandyam why should not the middle man who derives his right to the land from the Government have the same charge upon it? Of course, certain limitations are necessary to be imposed upon the exercise of this right. The Land Revenue Code does not seem to make a difference between "rent" and "land revenue." Without however entering into a detailed discussion on the subject as the law is as expounded by a majority of the learned Judges of the Chief Court in the above second appeal, it is respectfully requested that the Government may be pleased to introduce with a view to amend the law so as to favour a charge in favour of the superior holder, a short legislative measure and also invite public opinion touching the same before passing it into law.

B. M. S. S. S.
 2. 10. 1906

Dear Mr. Fraser,

I send herewith
for your information
a draft of a regulation,
which the Deba have
under consideration,
for further amending
the Civil Procedure Code
as in force in your
Provinces. The statement of facts
and reasons appended
to the draft explains the necessity for
the measure proposed.

2. The draft regulation will
be published in the
Gazette, & the views of
the Chief Courts & of all
persons interested invited
before it is taken finally into
consideration.

4)

3. I shall of course
make the usual official
comm. later on in
regard to procuring
the sanction of the
Gov. of India

Yours truly

H

20/11/46

Dean

Draft of a Regulation further to amend
the Civil Procedure Code.

Whereas it is expedient further to
amend the Code of Civil Procedure as in
force in Mysore; His Highness the Maharaja
is pleased to enact as follows:-

Addition to Section 310A
of the Civil Procedure Code.

1. To section 310A of the said Code
the following sub-section shall be added be-
tween sub-sections (1) and (2), namely,

"(1 A) If such deposit is made with-
in thirty days of the sale, the Court
shall pass an order setting aside the
sale".

Addition to Section 584(d).

2. In clause (d) of section 584 of
the said Code, after the words "in those
cases" there shall be inserted the follow-
ing words, namely,

"of which the amount or value of the
subject matter ~~does not exceed~~ ^{is above} five
hundred rupees and".

Amendment of Section 586.

3. In section 586, for the words
"fifty rupees" the words "five hundred rupees"
shall be substituted.

Addition to Section 588.

4. To section 588 of the said Code,
the following clause shall be added, namely,
"(16 A) orders under section 310A".

*Visit
Coffey bearing the
Seal of the court
to Registrar with the
No. 28/1/07.*

*(Initd) K. S.C.
27/12/06.*

provisions in regard to second appeals on questions of fact may be limited to appeals of the value of Rs 500 and over. Considering the fact that the decrees of the Chief Court are final in Mysore, and that there is no further appeal to a higher tribunal as in British India, the Government are of opinion that the second alternative is the preferable one. Hence the amendment proposed as regards section 584.

4. Section 586 as amended by Regulation II of 1884, allows second appeals in all suits of a small cause nature exceeding Rs 50 in value. The limit is Rs 500 in British India; and there seems to be no good reason why the limit should not be similarly raised in Mysore. The Chief Court have urged the change on the ground that second appeals in petty cases have greatly blocked the progress of litigation. Section 586 is proposed to be amended accordingly.

(J.A.D.) H. S. C
27/11/06.

(Munich)

Pol 6509 31-1-07

D.O. to Mr. Resident (15)

(My dear Sir)

In the draft-Sept. to
further amend the Civil Process
Code, sent with the drawings
D.O. letter no 410 of the 26th Feb/1907
will you kindly ~~have~~ ^{cause} the
following correction to be made:-

In section 2, for the words
"does not exceed five hundred
rupees," the words ~~"are not to exceed"~~
"is five hundred rupees or
less." ~~to be substituted~~

(Yours very truly)

31 107

enc.
31/1/07

N^o 880.

B.V. 111
Legs



T 2281

BANGALORE.

19th February 1907.

Dear Mr. Madhava Rao,

I am desirous to acknowledge, with thanks, the receipt of your D.O. letter No. 418 dated the 26th January 1907 enclosing a draft Regulation further to amend the Civil Procedure Code as in force in Mysore, and to say that the draft may be published for criticism as proposed.

Yours sincerely

J.P. Gennie

V.P. Madhava Rao Esqr. C.I.E.,

Dewan of Mysore.

NOTIFICATION.

No. J. 2754—Legis. 44-06-1, dated 8th March 1907.

The accompanying Draft of a Regulation further to amend the Code of Civil Procedure as in force in Mysore, together with a statement of objects and reasons therefor, is published for general information.

2. The Draft Regulation will be taken up for consideration at the end of three months from the date of its publication in the Gazette and all suggestions and criticisms received within that period will be duly considered.

By Order,

K. S. CHANDRASEKHARA AIYAR,
Secy. to Govt., Gen. & Rev. Depts.

Draft of a Regulation further to amend the Civil Procedure Code.

Whereas it is expedient further to amend the Code of Civil Procedure as in force in Mysore; His Highness the Maharaja is pleased to enact as follows :—

Addition to Section 310A of the Civil Procedure Code.

1. To Section 310A of the said Code, the following Sub-Section shall be added between Sub-Sections (1) and (2), namely,

“(1. A.) If such deposit is made within thirty days of the sale, the Court shall pass an order setting aside the sale.”

Addition to Section 584 (d).

2. In clause (d) of Section 584 of the said Code, after the words “in those cases,” there shall be inserted the following words, namely,

“of which the amount or value of the subject matter is five hundred rupees or above and ”

Amendment of Section 586.

3. In Section 586, for the words “fifty rupees,” the words “five hundred rupees” shall be substituted.

Addition to Section 588.

4. To Section 588 of the said Code, the following clause shall be added, namely,

“(16. A.) orders under Section 310A.”

STATEMENT OF OBJECTS AND REASONS.

The accompanying draft Regulation is intended, *firstly*, to rectify certain formal defects in the Code of Civil Procedure as amended by Regulation III of 1906, and *secondly*, to promote the speedier disposal of business in the Chief Court by curtailing the right of second appeal to a certain extent.

2. Section 310A as inserted by Regulation III of 1906 provides that a person owning immoveable property or holding certain kinds of interest therein may apply to have the sale of such property set aside on making certain deposits within thirty days from the date of the sale. A Sub-Section has been added to the Section to make it clear that, where such deposit as above is made, the Court shall pass an order setting aside the sale. A clause has also been added to Section 588, so as to render orders under Section 310A appealable, a fact already implied in Sub-Section (4) of Section 310A.

3. When the Code of Civil Procedure was introduced into Mysore in 1884, clause (d) was added to Section 584 so as to allow to the Chief Court (then newly formed, with three Judges) a second appeal on questions of fact when the two lower Courts differed in opinion on such questions. The Chief Court have recommended that either clause (d) may be repealed altogether, or that the provisions in regard to second appeals on questions of fact may be limited to appeals of the value of Rs. 500 and over. Considering the fact that the decrees of the Chief Court are final in Mysore, and that there is no further appeal to a higher tribunal as in British India, the Government are of opinion that the second alternative is the preferable one. Hence the amendment proposed as regards Section 584.

4. Section 586 as amended by Regulation II of 1884, allows second appeals in all suits of a small cause nature exceeding Rs. 50 in value. The limit is Rs. 500 in British India; and there seems to be no good reason why the limit should not be similarly raised in Mysore. The Chief Court have urged the change on the ground that second appeals in petty cases have greatly blocked the progress of litigation. Section 586 is proposed to be amended accordingly.

ale
draftFile No. 69.
Serial No. 2

Diary No. of letter replied to _____

No. 727 ST

Encl

General and Rev. Secretariat

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, the 190 . }

To

The Registrar of the Chief
Court of Mysore

Date of issue

8-3-07

Signed by

By the Secretary

not done

Sir,

I am directed to forward
herewith a copy of a Draft Regulation
further to amend the Code of Civil Procedure
as in force in Mysore and to
request you to be so good as
to obtain and furnish ^{at an early date} the
opinions of the Judges of
the Chief Court ^{well as} of the other
judicial officers ^{and leading members of the} ~~in the~~
Chief Court may deem advisable
to consult ~~with~~ and also
~~of the leading members of~~
~~the Bar~~ regarding the
proposed amendments, at
an early date ^{over.}

SUBJECT.

W 15/2/07

no 26/12/05
26/11/06. med
13/07

I have to

Secretary

27/2/07
2/3/07
2/3/07
2/3/07

✓ 5655
259
J 43-4
20/4

(20)

Bangalore, Dated 1st April 1907.

From

V. A. Rajaratna Mudaliar, Esq.,
Registrar, Chief Court of Mysore.

To,

K. S. Chandrasekara Iyer Esq.,
Secretary to the Government of Mysore,
General and Revenue Departments.

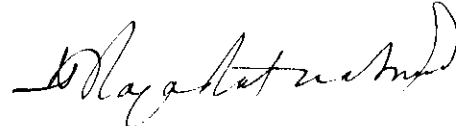
Sir,

Adverting to your letter No. J 2755-Legis. 44-06-2 dated 8th ultimo forwarding, for opinion, copy of a draft regulation to further amend the Code of Civil Procedure, I am directed to forward copies of the opinions of the Judges of the Chief Court. Further opinions which have been asked for will be sent when received.

I have the honour to be,

Sir,

Your most obedient servant,



Registrar.



Encl 5
Leg 44-073

OPINIONS OF THE JUDGES.

The Chief Judge:- The clause (1A) proposed to be added to section 310A C.P.C. should be inserted. It is in the old section and appears to have been left out by oversight.

I would cancel clause (d) of section 584 of the said code altogether and go back to the law as in force in British India.

The proposed amendment of section 586 is approved.

As regards the proposed addition to section 588 C.P.C. I am very doubtful. It is not advisable to multiply these appeals. The rule in British India is that, where the order under section 310A comes within the purview of section 244, there is an appeal (I.L.R. 21 Madras 416 and 25 Bombay 413) ; otherwise there is no appeal (25 Bombay 631). This is I think right.

Mr. Justice H.V. Nanjundayya :- I agree with the views of the learned Chief Judge, except that I would ^{have} ~~leave~~ section 2 as proposed in the Government draft.

Mr. Justice P. S. Krishna Rao:- Now that it is proposed to amend section 310A C.P.C. , I consider I shall not be going out of my way if I urge for the consideration of Government the desirability of amending the section in another particular also. As the section now stands, the judgment-debtor is, in all cases, required to pay into court, in addition to the 5 per cent of the purchase money payable to the purchaser as and by way of compensation for the cancellation of the sale made in his favour the full amount of the purchase money together with the costs ~~of~~ the

the attachment and sale, for payment to the decree-holder. It is somewhat difficult to understand why the full amount of the purchase money should be paid to the decree-holder, if it should be more than the amount of the decree and costs of execution which is all he is entitled to get. The British India Act requires this latter amount alone to be paid and this seems equitable. Our law should therefore be made to conform to that in force in British India in this respect. But even the British Indian Act is, in my opinion, productive of hardship in cases in which the amount of the purchase money is less than the amount due to the decree-holder, for in such cases there seems no reason why the judgment-debtor should be called on to pay more than what the decree-holder would be entitled to get if the sale, the cancellation of which is sought by the former were not set aside. I would therefore suggest the following amendment being made as regards section 310a, sub-section (1), clause (b) (ii), namely:-

" for payment ^{to} ~~of~~ the decree-holder a sum equal to the purchase money together with the costs of the attachment and sale, provided that in cases in which such sum is less than the amount specified in the proclamation of sale as that for the recovery of which, the sale was ordered (less any amount which may since the date of such proclamation of sale, have been received by the decree-holder), it shall not be necessary for the judgment-debtor to pay more than this latter amount.

2. Coming now to the amendments proposed in the draft regulation, I agree with the learned Chief Judge in thinking that addition of sub-section (1A) is necessary and that the amendment proposed of section 586 C.P.C. as in section 3 of the draft is desirable.

As

23
at the

of

[Signature]

K. A. H. H. H.

Registrar.

SL4. (24)

To ~~the~~ ^{the} Secretary, to the Govt. of Mysore
J. 40.
Re: Civil Rights.

~~Respected Sir,~~
I beg to state that I have
sent to you a & despatch by Registered
book post today a
copy of the Resolutions passed
at a public meeting
on the 20th July 1907. Re.
the proposed amendment
of Secs: 584 and 586 of
the Code of Civil Procedure
code with a full hope
that the suggestions given
therein will be duly considered.

I beg to be
Respected Sir
Yours obedient servant
Chitaldurg
3/7/07
B Venkata Samanna
B.A. B.L.
Advocate

II 467
Yegio 47

(75)

Proceedings of a Public meeting held
in the Law Association Chhatra Bhawan on
the 2nd July 1907.

Eveltsky

Chairman: Mr B. Venkata Ramana
B.A.B.L.

Advocate
Chhatra Bhawan

I Resolved that suggestions are to
be sent to the Secretary of Government
General and Revenue Department
in the matter of the proposed amend-
ment of Sections 584 and 586
of the Code of Civil Procedure, as
called for in Draft Regulation
published in Government Gazette
dated 4th April 1907

II That the proposed alteration in
the existing Law produces a
very great hardship upon
poor suitors by depriving them
of the right of appeal to the
Honorable Chief Court where justice
can be secured at the hands
of the highest Judicial officers of
the State

III That throughout the Province
in general and at least
so far as this District is
concerned more and more

if the right of appealing to the
magistrate and best in tellect ¹²⁷
can be denied to him ~~the~~
the value of the subject matter
of the suit may be

VII That the sum limit of Rs 500
is too high In the neighbouring
Province of Coorg the limit is Rs 300.
Though this is the case, the Judicial
Commissioner is empowered
to admit a second appeal
when the amount or value
of the subject matter exceeds Rs 100,
if on a perusal of the records of
appeal and copies of the judgment
of the Lower Court he is of opinion
that a further consideration of
the case is requisite for the ends
of justice

Vide Regulation II of 1881 sec: 12. 13

VIII That this meeting respectfully hopes
that some better arrangement may be
made so as to ensure the speedy
disposal of appeals before the
Honorable Chief Court and begs
to suggest that the Honorable Chief
Court be relieved of its original
jurisdiction by the establishment
of one District and Sessions Court
at Kolar and Tumkur

in which case
will be enabled to devote its full
time in disposing of Revenue
Second appeals. (28)

IX That the British ~~and~~ subjects
have the right to prefer a third
appeal against the decision of
the chartered High Courts in
India, — whereas under the
present circumstances, the subjects
of His Highness the Maharaja of
Mysore have the right of appealing
to only two tribunals and the
proposed further curtailment
of the right would necessarily
endanger the administration
of Justice to the comparatively
poor though loyal subjects
of His Highness the Maharaja
of Mysore.

X That the Meeting, therefore,
most respectfully submits its protest
against the proposed change of

Sections 584 and 586 of the Code
of Civil Procedure and prays
that they ^{may} stand as they are.

B. Venkataswami

No. 446 Rev. out.
4/10/7 29

J. 204
48/44-06-5 (29)

Chief Court of Mysore,

Bangalore dated, 15th July 1907.

From,

V. A. Rajaratna Mudaliar Esq.,

Registrar, Chief Court of Mysore.

To,

C. S. Balasundaram Iyer Esq.,

Offg: Secretary to Government,

General and Revenue Departments.

Sir,

In continuation of this office letter No. 5455/259 dated ^{48/44-06} 1st April 1907, I am directed to forward copies of opinions of

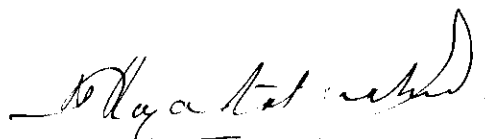
The District Judges of
Bangalore, Mysore and
Shimoga. The Government
Advocate.

the marginally noted Officers and
of Mr. C. Krishna Murti Advocate.

I have the honour to be,

Sir,

Your most obedient servant;



REGISTRAR.

B.V.

mim

Encl to

(30)

T. Paramasiva Iyer Esquire, District Judge, Bangalore Division:-

Regd 44-07-5

Section 1 of the proposed Regulation may be adopted, and so may sections 3 & 4. In regard to section 2, I am of opinion that the principle of the existing rule is equitable. Where the Original Judge who had the advantage of scrutinizing the demeanour of the witnesses and the appellate Judge who decides on a perusal of the records differ as to facts, there is every probability while making all allowances for the superior ability and larger experience of the latter that the chances of either Judge being correct are about equal. While it is advisable to limit the number of appeals even at the risk of injustice being done occasionally, it seems to me that a limit of Rs. 500/- would be very hard in cases involving the ownership of wet and dry lands where the value of the subject-matter as calculated under the rule of 5 times the Government assessment represents frequently less than 5 per cent of the market value of the lands.

From the point of view of the need for reduction of the heavy work of the Chief Court I am not competent to offer any remark.

S. Venkatavaradan Iyengar Esquire, District Judge, Mysore Division

The addition proposed to section 310a, requires the following expression to be added after word "deposit" viz and application. The addition would then read (1a) "If such deposit and application are made within 30 days of the sale, the Court shall pass an order setting aside the sale". It will be seen that without the words and application, there will be room for the contention that mere deposit of the money is enough to have the sale set aside; whereas by section 310a an application accompanied by deposit is essential.

The law as now proposed in the amendment makes it imperative

perative on the Court to pass an order setting aside the sale when the deposit is made within 30 days of the sale, and therefore the addition to section 588, of orders passed under section 310a, to say that the latter orders are open to appeal, requires reconsideration. I would therefore respectfully suggest that the appeal be allowed only when the application to set aside the sale, is refused.

The proposed addition to clause (d) of section 584, is unnecessary, for the section provides that second appeals lie unless otherwise provided, and section 586 provides, cases in which no 2nd appeal shall lie. Therefore the expression "of which the amount or value of the subject-matter is Rs.500/- or above and" will be redundant when section 586 is properly worded.

With reference to the proposed section 3, namely, that "for the words 50 rupees the words 500 rupees shall be substituted", I respectfully beg to bring to notice the fact that when the Small Cause jurisdiction of certain Subordinate Judges, was fixed at Rs.300/-, the Government had to rule that it was pitched at a high figure and reduced it to Rs.100/-. So long as the Sub-Judges have the power to hear appeals, it must be expected that cases involving Rs.500/-, will be turned over to them for disposal. In a way, then, these officers will virtually exercise on the appellate side, if the proposed amendment is granted, a small cause jurisdiction up to Rs.500/-. This result will be of doubtful efficacy. I would, therefore, propose that the amendment be worded as follows:- In section 586 for the words Rs.50/- the words Rs.500/-, shall be substituted when the second appeal is against the decision of a District Judge, and Rs.100/- when it is against that of the Sub-Judge.

... :- 0:- ...

R.B.Plumer Esquire, District Judge, Shimoga Division.

The amendments proposed in the Draft Regulation published on page 29 Part III of the Mysore Gazette dated 21-3-07 appear necessary.

The

The opportunity is taken to point out that there is at present no complete edition of the Mysore Code of Civil Procedure with amendments upto date.

The Munsiffs complain that this causes inconvenience, necessitating reference to several volumes to see what has and what has not been amended.

It is suggested that the publication of a code with amendments complete upto date would be a great convenience.

***** :- o:- *****

S. Narayana Rao Esquire, Government Advocate,

I was not able to get correct statistical information necessary to form an accurate idea of the number and class of cases which will be affected by the proposed change of Law as to second appeals.

On a careful consideration of the reports on the administration of Civil justice, I think the following figures, in round numbers, may be taken as an approximately correct average of the last five years. The verage number of suits for disposal is about 25,000/-. Number of suits remaining undisposed of at the end of each year is about 6000/-. The number of suits disposed of *The no. of cases tried as small causes is about 7000. The no. tried as original cases is about 12,000.* is about 19,000/-. About $\frac{1}{4}$ of this number or 3000/ may be taken as contested. The number of first appeals is about one-third of this number i.e. 1000/ and about one fifth of these are taken in second appeal i.e. 200/.

The two hundred second appeals classify themselves thus:- About $\frac{1}{4}$ or 50/ of these arise in suits of small cause nature of less than 500as in value. One half of the remaining 150 second appeals or about 75 were on questions of fact under clause (d) of section 584 and about two-thirds of this or 50 may be taken to be of less than Rs. 500/- in value. If the proposed bill were to become law, the number of second appeals will come down to about 100 a year.

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necessity of amending the section 538(Clausel6) does not seem to have been considered, as, by the nature of the definition of "person" and of the terms imposed, and considering also, that if the decree-holder himself is not the purchaser, the order under section 310A., cannot be deemed to be proceedings between the decree-holder and judgment-debtor under section 244. Again, does the 'appeal' referred to in this Clause include a 'second appeal'? The last word 'otherwise' in this clause is indefinite. Does it mean 'Proceedings' by way of 'Revision' under section 622 or also by a regular 'suit'? Then again, the expression 'the property sold shall not be liable to be again attached in execution of the same decree', seems to defeat the very object of section 310A. Does it mean the said property may be sold again in satisfaction of any sum that may be still due under the decree? Because the only order to be made under section 310A., is to set aside the sale and not the attachment and no reattachment is necessary under the Code to sell the property again. . Probably it was meant to say that the said property shall not be sold again in execution of the same decree-----" In removing the defects pointed out, the framer of the Draft seems to have failed to notice the objection to the last clause of section 310A., (Regulation III of 1906). It is better to declare the law with certainty by substituting the word 'Sold' for the word 'Attached' in the said clause of the section.

SECTION 534 The Government considers it expedient to reserve the right of second appeal under the circumstances declared in clause (D) of the section 534. But it is considered fit to curtail the right of special appeal under this clause only in cases of Rs.500/- and above in value. Here, we should not forget the usefulness of an enactment like 'Suits Valuation Act' as in British India. The value of suits in Mysore is ascertained by the mode provided by the Court Fees Act. This mode of valuation, as we all know, does not really represent the market value of the property ; and which is a valuable asset for the holder of the land. Hence it may be observed the valuation

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of suit in Mysore would not be a proper test for ascertaining the nature and importance of the subject-matter of a suit. Again, we shall see the value of the bulk of the litigation in the province. I take the latest statistics as published in the report on the Administration of Civil Justice for the year 1905-06. The total number of suits filed in all the Courts of the Province was 19,408. Of this, 18,572 suits (over 95%) were of Rs.500/- and below in value. The average value of a suit in all Courts disposed of during the same year was only Rs.148-8-5. If the money limit for the purpose of this special appeal be fixed at Rs.500/- and above as now proposed, then not one of this large number of 18,572 suits could have the benefit of the clause. I may also here point out the average value of second appeal during the same year was Rs.267-0-6. Further, the usefulness of the clause is proved by the fact that, out of 119 appeals disposed of during the same year by the Chief Court under this clause, only 55% of the appeals were dismissed; of the remainder 35% resulted in the reversal of the decrees appealed against and 10% in modification. Hence the appeals under this clause set right about 45% of the cases that went wrong in the Courts below.

Therefore, if it is intended that this benefit should be continued, it should be so continued as to be within the required reach of the subject that is compelled to have recourse to a Court of Law. As observed above, we see the average value of suits and second appeals in this province is only Rs.148-8-5 and Rs.267-0-6 respectively. Therefore in my humble opinion the proposed limit of Rs.500/- is enormously high. I would suggest Rs.100/- (One hundred rupees) as a fair limit. I may also here remark that this limit is considered sufficient by the Government of India in the neighbouring Province of Coorg for the purpose of this clause.

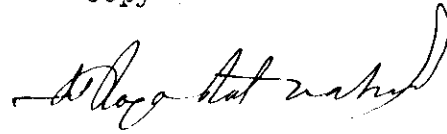
SECTION 586 This section, of course, requires some amendment. As it is, it is purely a dead letter. The limit
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may be raised to Rs.100/- to be in conformity with the proposed
limit of Rs.100/- for the purpose of section 584, clause (D). (36)

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